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CANADIAN COPYRIGHT

by

Sir Daniel Wilson, LL.D., F.R.S.E.
President, University of Toronto

Paper read before the Royal Society
of Canada, May 31st. 1892.

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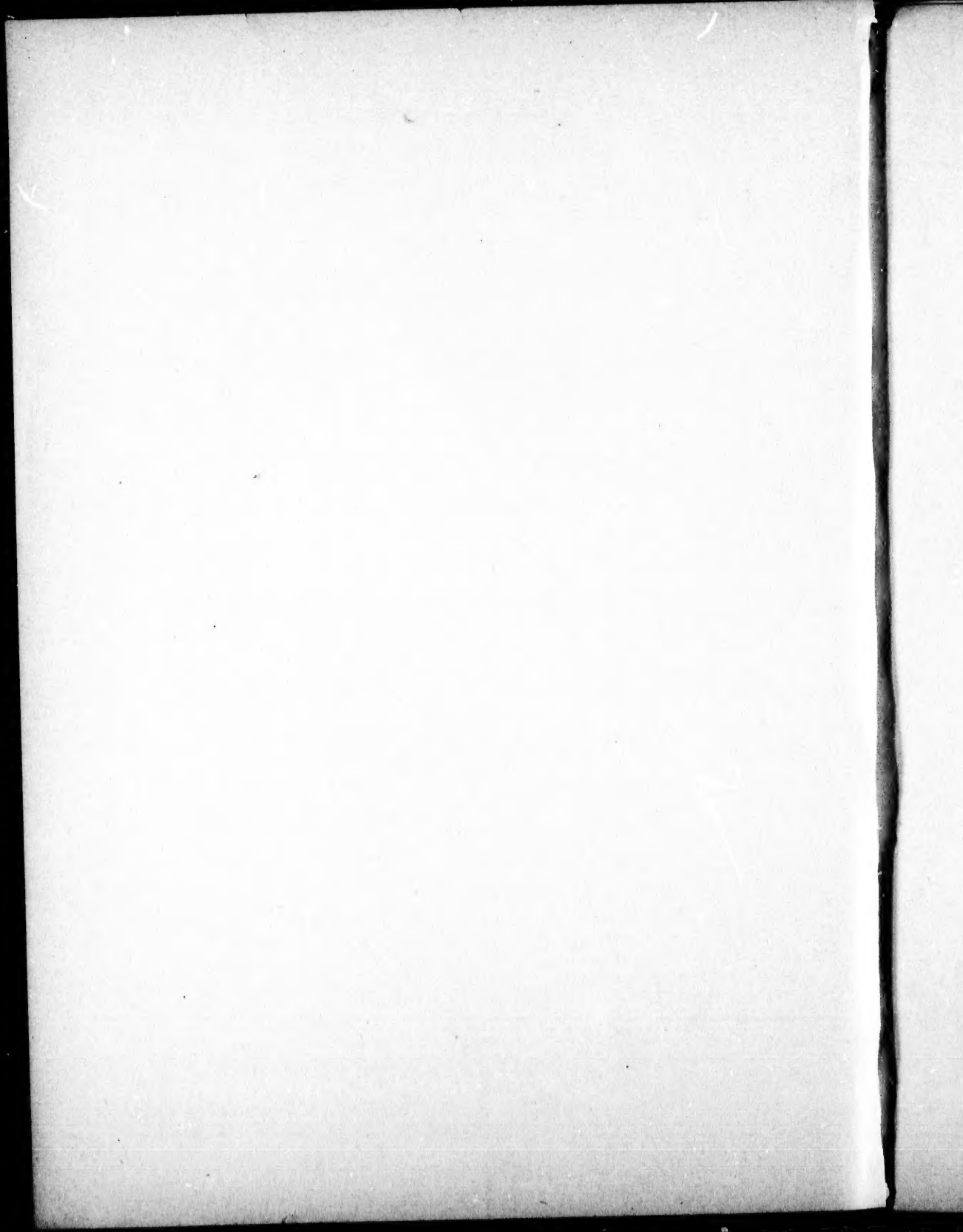
ROYAL SOCIETY OF CANADA

TRANSACTIONS

SECTION II.

ENGLISH LITERATURE, HISTORY, ARCHÆOLOGY, ETC.

PAPERS FOR 1892



I.—*Canadian Copyright.*¹

By Sir DANIEL WILSON, LL.D., F.R.S.E., *President of the University of Toronto.*

(Read May 31st, 1892.)

While the Royal Society of Canada is inviting the publication in its annual volumes of 'Proceedings,' of contributions designed to extend our available resources in special departments of knowledge outside the range of popular literature, and thereby to facilitate the interchange of philosophical speculation, and of the results of scientific discovery and research, it cannot be regarded as foreign to its true functions to take into consideration the facilities, and also the impediments and restrictions affecting Canadian literature. In the report of the Provisional Council, which furnished the basis on which the Royal Society was organized, it is provided in section 9 "That the advice and assistance of the Society shall at all times be at the disposal of the Government of the Dominion in all matters which may be within the scope of the Society's functions." Among the subjects on which the Society may with fitting propriety offer such advice, there are few, if any, that can be more legitimately ranked in such a category than the legislation which aims at placing on a just basis the rights of authorship and the privileges of copyright.

The definite recognition of a proprietary right in the fruits of intellectual activity and the creative powers of genius, alike in letters and in art, is one of the evidences of a matured civilization. The tardy recognition of an author's right of property in the productions of his pen and brain, along with the limitations and restrictions on such rights, furnish materials for an interesting chapter in the history of civilization. It was undoubtedly due to the absence of all recognition of an author's copyright in the reigns of Queen Elizabeth and James I. that the larger half of Shakespeare's dramas appeared for the first time in the famous 1623 folio, published seven years after their author's death, with the irreparable lack of proof-reading and final revision. From this it has followed that the text of the noblest writer in English literature is marred by numerous misreadings and blundering misprints, and has furnished the subject, not only of laborious critical acumen, but of embittered controversy to a long succession of commentators.

But at the very time when England was awakening not only to an intelligent appreciation of the rights of authorship, but of the interest of all in the beneficent results to which such protection tends, a new element of disturbance among the English-speaking race came into play. Old colonies cast off their allegiance to the mother-land, and English statute laws ceased to be co-extensive with the common race and speech. Under the circumstances in which separate and rival nationalities thus originated among those "who speak the tongue that Shakespeare spoke," but of whom it could not always be

¹ This paper was the last literary effort of the author, who died before he could revise the manuscript or see a proof. *Ed. Trans.*

said, by authors at least,—“The faith and morals hold which Milton held,” the interest in the literature of the mother-land remained unimpaired, but the interests of the English authors ceased to concern the New Englander. The result has been the systematic appropriation, for upwards of a century, by the Anglo-American, of the productions of English authorship during one of the most brilliant periods of English literature, in open disregard of every moral claim of rightful proprietorship in the products of literary industry. Nor have the wrongs of the English author been limited to the appropriation and reproduction of the fruits of his honest labour. Other, and in some respects still more vexatious grievances have followed as a consequence of this ignoring of his proprietary rights in the fruits of his own workmanship, and so of control over their reissue through the press. The writings of Scott, Byron, Wordsworth, Coleridge, Shelley and Keats, as of the Brownings, Tennyson, Morris and other poets of the past and present generation; of Carlyle, DeQuincy, Ruskin, Arnold; of Hallam, Macaulay, Green, Stubbs, Freeman and Gardiner; of Bulwer, Dickens, Thackeray, and the whole array of brilliant English writers of fiction, have been a source of pleasure and profit to hundreds of thousands of readers, without their giving a thought to the wrong done to their benefactors by the traders whose deeds they condone, and who practically act on the assumption that these products of exceptional intellectual power, and in some cases, of rare genius, are the sole work of the compositor and printer's devil.

We have been so long accustomed on this continent to the shameless contempt of an author's rights, and the deliberate printing and selling of his works for the benefit of everybody but himself, that the purchaser of the cheap reprints has come at length to feel himself aggrieved at the idea of the author claiming any control over their issue.

The English publisher who pays the author for his manuscript, or undertakes the risk of publishing an untried author's first work, must necessarily issue it on very different terms from the reprinter, who—safe beyond the protecting powers of English justice—waits till the work has won its way to popular favour, or the author has made for himself a name, and then steps in to reap where he has not sown, wholly regardless of the author's claims. To pick his pocket as he landed in the harbour of New York would be criminal as well as base. To steal his brains and appropriate the profits of his labour, in open contempt of his claims to his own property, under cover of an alien law, is simply “smart practice,” and the certain avenue to such wealth as “covers a multitude of sins.” One of the defenders of such proceedings argues that as “according to the statutory laws of the United States, foreign authors have had no copyright, the appropriation of their works could not be a theft.” But there is another enactment older than either American or English statutory laws; and there are still countries where the appropriation of the author's coat or his purse would as little conflict with any known statutes as the laying of violent hands on his writings. If an American author appropriates even a few choice pickings from his alien confrère's writings, he is forthwith arraigned before the court of Apollo and the Nine, and adjudged guilty of the high crime and misdemeanour of plagiarism, with very grave penalties in reputation and standing. But the publisher seizes the whole in open day, with the full approval of a community of buyers of cheap editions, as a laudable act of legitimate trading. But public opinion is not so absolutely stereotyped, even under the influence of self-interest, as to be beyond all reach of amendment. The Southern planter has ceased to luxuriate on the profits of fields cultivated by

unpaid labour ; and the community that profited by their gains has awakened to a sense of moral obligation. The recently enacted American copyright law, meagre as are its concessions to the British and Canadian authors, may be fairly welcomed as a recognition of what the old moral law teaches as our duty to our neighbours. But the acquisition of the choicest English literature on such easy terms is a very seductive temptation. On one occasion when I was setting out on a visit to Europe, I was addressed by a New England lady who begged me to convey to Mrs. Oliphant an assurance of the grateful appreciation of her American sisters for all the pleasure her writings have given them. I duly delivered the message, and carried back to her appreciator a reply which, while acknowledging the compliment, suggested that the most practical evidence of the estimation of an author's works would be some share in the profits of their sale. To my surprise the message—though conveyed in all good humour,—was seriously resented, with the blunt comment that anything that interfered with the cheap circulation of popular literature would be opposed to the general interests of the community, and an encroachment on popular rights.

It is a noble incident in the life of Emerson, his turning to account the absence of a protective copyright to win for Carlyle some fruits of his early and still unrequited literary toil. Nor is that by any means a solitary instance of such generous sympathy with struggling genius. American authors have cordially sympathized with the wrongs of English writers, and none the less so that the latter have always resented the idea of any English retaliation. But of the profits made in America by the sale of Carlyle's writings the share that fell to their author was insignificant indeed ; of small worth, in truth, except as a manifestation of brotherhood from a kindred spirit, wafted in kindly sympathy across the ocean. What Carlyle himself thought of the marauders in the field of unprotected copyright he had left on record in his most graphic style, when, in 1839, some threatened legislation by the British Parliament evoked his "Petition on the Copyright Bill." It expresses in effective fashion the righteous indignation of an aggrieved author.

"To the Honourable the Commons of England in Parliament assembled, the petition of Thomas Carlyle, a writer of books, humbly sheweth :

"That your petitioner has written certain books, being incited thereto by various innocent or laudable considerations, chiefly by the thought that said books might in the end be found to be worth something.

"That your petitioner had not the happiness to receive from Mr. Thomas Tegg, or any publisher, republisher, printer, bookseller, bookbuyer, or other the like man or body of men, any encouragement or countenance in writing of said books, or to discern any chance of receiving such ; but wrote them by effort of his own and the favour of Heaven.

"That all useful labour is worthy of recompense ; that all honest labour is worthy of the chance of recompense ; that the giving and assuring to each man what recompense his labour has actually merited, may be said to be the business of all legislation, polity, government and social arrangement whatsoever among men ; a business indispensable to attempt, impossible to accomplish accurately ; difficult to accomplish without inaccuracies, that become enormous, insupportable, and the parent of social confusions which never altogether end.

"That your petitioner does not undertake to say what recompense in money this labour

of his may deserve; whether it deserves any recompense in money, or whether money in any quantity could hire him to do the like.

"That this labour has found hitherto, in money or money's worth, small recompense or none; that he is by no means sure of its ever finding recompense, but thinks that if so, it will be at a distant time, when he, the labourer, will probably be no longer in need of money, and those dear to him will still be in need of it.

"That the law does at least protect all persons in selling the production of their labour at what they can get for it, in all market-places, to all lengths of time. Much more than this the law does to many, but so much it does to all, or less than this to none.

"That your petitioner cannot discover himself to have done unlawfully in this his said labour of writing books, or to have become criminal or to have forfeited the law's protection thereby. Contrariwise your petitioner believes firmly that he is innocent in said labour; that if he be found in the long run to have written a genuine enduring book, his merit therein, and desert towards England and English and other men, will be considerable, not easily estimable in money; that on the other hand, if his book proves false and ephemeral, he and it will be abolished and forgotten and no harm done.

"That, in this manner, your petitioner plays no unfair game against the world, his stake being life itself, so to speak (for the penalty is death by starvation) and the world's stake nothing till once it sees the dice thrown; so that in any case the world cannot lose.

"That in the happy and long doubtful event of the game's going in his favour, your petitioner submits that the small winnings thereof do belong to him or his, and that no mortal has justly either part or lot in them at all, now, henceforth, or forever.

"May it therefore please your Honourable House to protect him in said happy and long doubtful event, and (by passing your Copyright Bill) forbid all Thomas Teggs and other extraneous persons, entirely unconcerned in the adventure of his, to steal from him his small winnings, for a space of sixty years at shortest. After sixty years, unless your Honourable House provide otherwise, they may begin."

Respectable printers, publishers, and booksellers, are naturally scandalized at the application of such terms as "stealing" "pirated editions," etc., to their free dealings with authors' works. But to a writer who, like Carlyle, has produced a book, which is the embodiment of the thought and experience of studious years, of long and patient labour much expenditure of time, and not a little outlay of money in the accumulation of his materials, it is not easy to cull a phrase which shall express his feelings on its appropriation for the sole use and profit of a stranger, and yet prove acceptable to the highly respectable appropriators. Shakespeare's Falstaff tried his hand at it long ago. "'Convey,' the wise it call. 'Steal!' foh, a fico for the phrase!"

We have had some grave lessons of the need of a high standard of morality to be the guide of public opinion, and of public life in Canada. In the long run all experience proves that honesty is the best policy. In spite of all the gains of the American community from the wide diffusion of cheap literature, they have sustained a serious loss in the impediment it long presented to the encouragement of native talent. But apart from this, it is a reflection of grave import to a people among whom the love of literature has been fostered by such means, to consider how many struggling authors who have contributed to their pleasure, would have welcomed a reasonable share in the profits of American reprints and a gleam of sunshine in some of life's deepest gloom. Scott died in the

struggle to redeem his fortune by his pen, while thousands, aye hundreds of thousands, of American readers were deriving pleasure and profit from his writings. It must surely awaken some sense of remorse in the minds of American appreciators, who have adorned their parlours with his statues, and their galleries with his portraits, to reflect that if Scott had received his honest dues for the editions of his works printed and sold in America, it might have transformed the sorrowful tragedy of his closing years into a bright and happy eventide? Authors of his type are rare; but it would not be difficult to name a considerable list of gifted men and women, to whom the enjoyment of the profit of works, the product of their genius and toil, would have made all the difference between the depressing drudgery of writing for bread and such ease as might have reflected itself in their inspired writings.

But it is a narrow view of the question which assumes the author as a mere producer of marketable articles, and a bread-winner. A large portion of the highest class of literature makes no pecuniary return to the author for his expenditure of labour, time, research, and actual outlay of money in the production of his work. It is his, as is the land which the industrious settler has by years of laborious toil redeemed from the wilderness; or as the manufactured goods of the producer, who by labour and ingenious skill transforms the raw material, the wool, cotton, hemp, or flax, into the marketable goods that are so large a source of national wealth, and the property in which is jealously guarded by the laws of every civilized community. But Canadians have hitherto moved in the wake of their more enterprising neighbours, and been content to share the fruits of the energetic if somewhat unscrupulous doings of American aggrandizers. They have been educated accordingly, until the convenient results have come to be regarded as their just rights.

It does not seem to suggest itself to most Canadians that the author's right of property in the product of his brain, of his time, study, labour and pecuniary outlay, is a matter of any importance. It is treated as a mere question between English and Canadian printers and publishers; as though the "Idyls of the King" and the "Descent of Man," Carlyle's "Frederick the Great," or Bryce's "American Commonwealth" were the mere work of the type-setter.

But American publishers, after systematically flourishing on the property of British authors, and printing and selling pirated editions of every popular English work, in utter contempt of their rights or wishes, have at length been shamed into the grudging concession of a meagre instalment of the honest recognition of an author's rights; and our Canadian legislators forthwith proceeded to take this as their model.

With the view of eliciting some expression of public opinion on the question of Canadian Copyright, I addressed letters on the subject to two of our leading Toronto papers. One of the replies is so essentially of a representative character and of value now, as emanating from the secretary of an organization claiming to have had a leading part in the movement that led to the framing of the Copyright Act of 1889, that I reproduce its chief arguments here. Its author, Mr. Richard T. Lancefield, the librarian of the Hamilton city library, writes, as I understand with the advantage of long experience in the itinerant book trade. He thus begins his letter "on the Canadian Copyright Act":

"As the secretary of the body that was mainly instrumental in directing Sir John Thompson's attention to the necessity for a new Canadian Copyright Act, I desire to add a few remarks to the recent discussion on this question in the columns of the

Mail. Sir Daniel Wilson champions the rights of the author, but he is decidedly wide of the mark when, in speaking of the new Canadian Copyright Act, he says:—"The whole aspect of the question is assumed to be the protection of printers and publishers on either side of the Atlantic." Those who recall the discussions when the petition of the new Copyright Act was presented at Ottawa will remember that the protection of the printers and publishers was only one of the reasons advanced for the passing of the Act. But, while that is a most important reason, others were not wanting. Sir Daniel intimates that a book is the production of its author, and is only produced after the expenditure of much time, money and labour. Perhaps it would be better to say that these remarks apply rather to the manuscript than to the book itself, for in many cases the author is but one of the factors that enter into the making of a successful book; the publisher, with his wide and varied connection and ready facilities for handling, is frequently equally as important a factor as the author, and occasionally even more so."

He then refers to the well-known case of Archdeacon Farrar, who, having parted with his copyright of "Life of Christ" to a publisher, at what we may presume had seemed to him a reasonable price, instead of bargaining for an interest in the profits, claimed—as I venture to think unreasonably—to share in the unexpectedly large results of its sale. I have been assured by a member of one of the largest London publishing firms, that notwithstanding all their experience, about one in every ten of their new ventures proves a failure; and as the Archdeacon would have thought it unreasonable, in the latter case, to be asked to refund any portion of the money paid for his MS., it seems reasonable that the publisher should retain the fruits of his successful speculation. The case, therefore, is not in point; but on the other hand it is instructive as an illustration of the uncertainties that the original publisher has to encounter, and the unfair advantage enjoyed by the reprinter, who gets all the advantage of his experience, whereby to select popular works involving no risk, and secured at no cost. But Mr. Lancefield goes on to say:—

"The law, therefore, very properly holds that so long as a work is in manuscript it is the sole and exclusive property of the author; but the moment it is put into book form for sale to the public, that moment the author loses his exclusive right in it. He is granted copyright for a term of years, after which his right lapses entirely. The principle that the author's right lapses after a term of years is accepted by all nations granting copyright; and this brings us face to face with the fact that others besides the author have to be considered in framing a Copyright Act. Author, publisher, and people must indeed all be considered; and, as a matter of fact, these very interests have all been carefully guarded in the passing of the new Canadian Copyright Act."

As the English author's copyright endures, under any circumstances, for forty-two years; for the natural life of the author, however prolonged, and for seven years after his death, it is a little misleading—if it be in a sense literally true,—to say that "his right lapses after a term of years." But a previous paragraph in the letter of Sir John Thompson's adviser in the framing of the new Copyright Act is a highly significant avowal of the ideas of "the trade" relative to the basis and extent of the claim to the fruits of his industry by the literary workman. Authors are not likely either to underestimate the power of the printing press, or to undervalue its beneficent influence on literature; neither are they in any danger of underestimating the influence of the pub-

lisher's share in the issue, sale and profits of their works. But the statement is highly satisfactory as a clear definition of the aspect of the question from the trader's point of view. "Sir Daniel," says Mr. Lancefield, "intimates that a book is the production of the author, and is only produced after the expenditure of much time, money and labour." But he adds, "perhaps it would be better to say that these remarks apply rather to the manuscript than to the book itself"; for, in his estimation, "the publisher with his wide and varied connection and ready facilities for handling is frequently equally as important a factor as the author, and occasionally even more so."

We are all tolerably familiar with a class of books, urged on our attention with pertinacious insistency by the itinerant book hawker, to which the latter statement will very aptly apply. Books made, not to read, but only to sell; books that no student would, on any terms, admit on his library shelves, and which do for the most part owe their main attractions to the experience of the publisher in catering for vulgar taste or personal vanity, with the help of meretricious illustrations, showy binding, and a taking title. On the other hand, the author is not unappreciative of his publisher's share in the work. Publishers are not infallible, even in estimating the trading value of literary workmanship, as many a well-known incident in the history of letters shows. Nevertheless full justice is done to the services rendered by the great publishing houses to English literature, and the liberality that has characterized the transactions between many of the most eminent writers, and the leading members of the guild went of old to be known, from their chief haunt under the shadow of St. Paul's, as "The Row." But when we are gravely told that, in the production of literary works, the publisher's share not only equals, but at times exceeds that of the author, the temptation is great to recall the story of the dispute between the organist and his bellows-blower, and the triumphant establishment of the latter's claims to an equal share in the production of the music, by his taking a favourable opportunity to stop the bellows and withhold the needful supply of wind.

No doubt authors sometimes appropriate what is not their own, and frequently turn to their own account materials to which they have no exclusive right. They are, in a sense, manufacturers of raw material; at times transmuting the unwrought ore and the baser materials into gold. We give printers and publishers full right to whatever use they can make of the same material. The crude myths and prosaic chronicles which Shakespeare turned to account in his "King Lear" and "Macbeth," his "King John," "Richard II.," and "Henry IV.," are accessible to all. Homer is no less available as a model now than when Milton earned £10 for the MS. of his "Paradise Lost," and the ballads and traditions woven by Scott into his later romances, or the Arthurian legends out of which Spenser gleaned for his "Faerie Queen," and from which Tennyson has fashioned his "Idylls," are still as much as ever at the service of every "factor" in the book-making trade whether he work with pen or type. No doubt the Spensers, Shakespeares, Miltons, and other stars of the first magnitude are rare in the literary firmament. But the expropriators of the works of British authors for behoof of printers and publishers in utter disregard of the workman's claims, have dealt with the creations of Scott and Byron, of Wordsworth, Shelly, Dickens and Thackeray; of Macaulay, Ruskin, De Quincy, and Carlyle, as freely and unscrupulously as with the marketable products of the meanest literary hack. Since "The Declaration of Independence" freed the citizens of the United States from all legal restraints in the appropriation of any literary production, they have

assumed a right to traffic in the fruits of English authorship which—unless on the basis of the venerable "Tables of Stone"—could not be legally called in question. The powers of our Canadian Parliament, though not unlimited, are undoubtedly great enough to legislate away very important rights of British authors. But it is significant to note the employment of the language "pirated copies of British copyright works," employed in a report of the Honourable the Privy Council of Canada, approved by His Excellency the Governor-General in Council, on the 17th August, 1889, when referring to the legalized importation of American reprints into Canada. It is quoted from the opinions given in 1871, by Sir Roundell Palmer and Sir Farrer Herschell—then among the highest authorities at the English bar,—relative to the legal rights of the British author throughout the whole empire. "The provision in the 5th and 6th Vic., which prohibits the importation into any part of the British dominions of pirated copies of British copyright works, is not now in force in its integrity. The Imperial Act of the 10th and 11th Vic., enables Her Majesty to suspend this prohibition in the case of any colony which should pass an Act providing reasonable protection to the authors of such works. The Canadian Legislature, under this provision, passed an Act (30 Vic., c. 56) imposing a duty for the benefit of the authors of such imported works, and the prohibition against importation has accordingly been suspended, and does not now apply to Canada, but with this exception, the Copyright Act, 5 and 6 Vic., is still in force throughout that colony." The benefit that did accrue to the author under the aforesaid provision, it may be added, proved wholly illusory.

The dealings of American publishers with British authors have been, from time to time, redeemed from the aspect of callous indifference to all moral obligations unsustained by statute, by honourable acts of liberality. But the history of the relations between the American "book trade" and the British author since the "Declaration of Independence" left the former free to do as he pleased, might, as a whole, form no unfitting sequel to the well-known book entitled "A Century of Dishonour." I refer to such proceedings now solely because they are made the excuse for assimilating the Canadian Copyright Law to the petty instalment of some fractional item of the British author's rights extended to him by recent American legislation.

The case as it presents itself in the interests of the Canadian printer and bookseller, has been thus fully set forth by Mr. G. Mercer Adam, whose long familiarity in earlier years with one aspect of the question as a bookseller and publisher, is supplemented by the later experiences of a journalist. "What," he asks, "is the Canadian position? Here, if in the discussion of this vexed question, and in our attempts to legislate upon it, we have to some extent looked 'to the protection of (native) printers and publishers,' we have not looked to their interests alone. Necessarily and properly we have sought to foster our own industries rather than those of the 'piratical' publishers across the line. But have we not had regard to the British author? Sir Daniel will, I hope, take me seriously when I say that it has often been a difficult task to make the British author see where his best interests lie. His best interests have not lain in compelling Canada to buy his publisher's high-priced English editions; still less have they lain in shutting us up to the use of unauthorized American reprints. By English enactment the American reprint has for now fifty years been legally allowed to enter Canada. For quite half of that time friends of the English author in Canada have striven to induce him to protect

his interests in the country by exchanging an ineffective for an effective system of royalty upon the sale of his works here; while, at the same time, by abandoning the methods in vogue he would help Canadian publishing industries, and the more speedily lead the American reprinter to agree to some measure of reciprocal copyright. To this day, he has in the main failed to see the advantage of this, and Canada has consequently had to bear the odium of complicity with what Sir Daniel Wilson calls 'literary theft.' That in the proposed Canadian legislation there is a measure of compulsion, or an absence of what is termed 'by your leave,' was, under the circumstances, inevitable, as every one knows who has given study to the question. But the measure set out to meet a real difficulty, and to meet it with honour and success."

Mr. Adam does his best to state in courteous terms the conviction that the British author has persistently played the part of a pig-headed fool. But, apart from the fact that the appeal thus presented to him is to make the best terms he can with men who insist on taking and using his property as they please, without leave of the owner, the author has in many cases far other and more valued interests at stake than the royalty or percentage on his works. Why should not Canada deal with him as one capable of managing his own affairs; the present tendency in most civilized communities is to proceed on this assumption, and the "Berne Convention" aims at placing it on a cosmopolitan basis.

Every country possessing a literature of its own, or desiring to acquire one, must give the author full control of his work, and leave him to make his commercial arrangements in the way which he thinks best promotes his interests. The law merely protects his right of property. The spirit of the Berne Convention is to make those rights as complete and uniform as possible. Let us not, as Canadians, proceed on the assumption, that we neither have nor anticipate any near future when we shall have a literature of our own, and so have a common interest in the republic of letters, as well as in the world's trade and commerce.

In so far as the ethical aspect of the plea for an immediate compromise with the trade is concerned, the line of argument seems to amount to this, that as our neighbours beyond the line have systematically availed themselves of their immunity from British law to turn to their own account the property and brain-work of English authors, and Canadian booksellers and bookbuyers have profited in the wrong, therefore the English author may as well give up all hope of being honestly dealt by, and come to terms with the spoilers. If he will not, then he is blind to his best interests and must take the consequences. The Act of 1889 is an amendment of an older one which, under the pretense of giving the British authors a percentage on pirated editions imported into Canada from the States, proved as already stated, a delusion and mockery. Moreover, while thus professedly aiming at securing cheap literature for the people, they are to a great extent debarred from the higher class of literature, and the public and university libraries are restricted in their purchases by a heavy duty on imported books.

The passing of the Copyright Act in 1889 almost without attracting the notice of Canadian authors and those specially interested in science and letters is significant. Our legislators appear to have welcomed advice from the book trade, but to have wholly ignored the representatives of the "manufacturer" of books. But brief as is the interval, Canadian authorship has already assumed a more aggressive status, and the small but

growing number of Canadian authors may find it worth their while to look at the question from another point of view. It is notorious that American publishers have made large fortunes by their systematic appropriation of the fruits of English authorship. But American authors have come to realize some idea of their own share in the inevitable fruits of such injustice. American publishers naturally looked askance at the productions of native authors, with legal rights, and a claim for adequate payment, when they could put to press the "copy" furnished free of cost by a host of popular English writers. Self interest has accordingly tended to enlist the American author on the side of his English confrère. But, altogether apart from any mere personal motives or interests, the British author could not fail to command the sympathy of the men of high intellectual rank and moral worth whose names adorn American letters, and some of whom still prize the kinship of blood, as well as of genius, which tempts them to claim their rights in the common Valhalla of the English race, and to covet a shrine in the poets' corner of Westminster Abbey. Nor has the honourable treatment which the American author has received at the hands of English publishers been without its legitimate influence in quickening such sentiment. A persistent pressure has accordingly been brought to bear upon public opinion in the United States until the Washington Legislature has been shamed into the grudging concession of certain very limited terms of copyright, in which the interests of the American printer and publisher still occupy the foremost place; and which, as now appears, commends itself to the Canadian trader as a fit and proper model for Canadian imitation.

It is accordingly provided by the Canadian Copyright Act, that—

"Any person domiciled in Canada or in any part of the British possessions, or any citizen of any country which has an international copyright treaty with the United Kingdom, in which Canada is included, who is the author of any book, map, chart or musical or literary composition, and the legal representatives of such person or citizen, shall have the sole and exclusive right and liberty of printing, reprinting, publishing, reproducing and vending such literary works, in whole or in part, and of allowing translations to be printed or reprinted and sold of such literary works, from one language into other languages, for the term of twenty-eight years from the time of recording the copyright thereof in the manner and on the conditions, and subject to the restrictions hereinafter set forth.

"The conditions for obtaining such copyright shall be that the said literary work shall, before publication or production elsewhere, or simultaneously with the first publication or production thereof elsewhere, be registered in the office of the Minister of Agriculture, by the author or his legal representatives; and further that such work shall be printed and published in Canada, within one month after publication elsewhere; but in no case shall the sole and exclusive right and privilege in Canada continue to exist after it has expired in the country of origin."

Then, after sundry provisions as to reprints already in the hands of the trade; or of contracts entered into before the new law was passed, it is next provided that—

"If the person entitled to copyright under the said Act as hereby amended fails to take advantage of its provisions, any person or persons domiciled in Canada may obtain from the Minister of Agriculture a license or licenses to print and publish the work for which copyright, but for such neglect or failure, might have been obtained; but no such license shall convey exclusive rights to print and publish or produce any work:

"A license shall be granted to any applicant agreeing to pay the author or his legal representatives a royalty of ten per centum on the retail price of each copy or reproduction issued of the work which is the subject of the license and giving security for such payment to the satisfaction of the Minister.

"The royalty provided for in the next preceding section shall be collected by the officers of the Department of Inland Revenue, and paid over to the persons entitled thereto, under regulations approved by the Governor in Council; but the Government shall not be liable to account for any such royalty not actually collected."

This is a repetition of the old illusory promise of a royalty utterly beyond the author's reach. He cannot possibly ascertain how many copies of his book are printed and sold; and he would find on application to the Customs, as has long since been abundantly demonstrated, that he might as well seek to recover the last winter's snows! In spite of all the saving clauses, including this promise of a royalty, which the Government are neither to be expected to account for or collect, the author is really classed apart as a pariah, outside of the ordinary rights of property in his own products. If any other class of manufacturers—and surely an author's manuscript is a very special class of skilled manufacture—were so dealt with by the legislature, it would be denounced as a monstrous wrong. One month is allowed him to register his legal property, and if he neglect to do so, it is free to any one to appropriate it for his own profit, it having thereby passed entirely beyond his control.

The statute embodying those provisions passed through the various stages in the two Houses of the Canadian Parliament, in May, 1889; but, as an Act especially affecting British interests, was reserved by the Governor-General for the consideration of Her Majesty. The Royal assent to the Act has thus far been withheld, and it may be assumed that it will be again brought under the consideration of the Canadian Parliament. With this prospect in view, it appears to be specially incumbent on the members of the Royal Society of Canada, as representatives of important interests involved, carefully to review the measure in all its aspects, and endeavour to obtain the enactment of a measure, creditable to the Dominion, and just to the author, while giving all reasonable consideration to the claims of other parties interested in the results of such legislation.

But it is obvious that popular opinion requires to be enlightened on some moral aspects of the question. Viewed from the narrow stand-point of mere self interest, there is no doubt that the Canadian Parliament by legislating away the rights of the British author, or placing him under restrictions and limitations analogous to the grudging concessions of the recent American Copyright Law, may secure to Canadians the acquisition of a certain class of popular literature at a cheaper rate, while this course of action is defended on the plea that whether we do so or not, our American neighbours certainly will. In the letter addressed by the Canadian Government to the Secretary of the Colonies in defence of the terms of the new Copyright Act it is stated that:

"Parliament considered that the peculiar position in which Canada is placed on account of her proximity to the United States, and the copyright policy of the United States demand peculiar treatment in legislation on the subject, and treatment different from both the Berne Convention and from the Imperial and Canadian Copyright Act heretofore in force."

American legislation, even in its recent first recognition that an author has any moral

rights to the fruits of his labour, and of whatever exceptional gifts he may possess, is still very much based on

"The good old rule, the simple plan,
That he should take who has the power,
And he should keep who can."

A righteous Canadian Copyright Law will recognize the paramount claim of an author to control the issue of his works, and to dispose of them on his own terms, even if those are not the most acceptable to the Canadian purchaser. The measure of estimation extended to authors, and the general standard of literary taste, are unmistakable indices of the intellectual status of a people. England could afford to laugh at Napoleon when he labelled the race of whom Shakespeare and Milton, Wordsworth and Scott, Bacon and Newton, sprung as a "nation of shop-keepers!" The "Frogs" of Aristophanes, alike by its plot, as a critical review of Hellenic tragedians, and by its popular reception, furnished a marvellous gauge of the intellectual stature of a community to whom such an appeal on behalf of the claims of authorship could be addressed with an assurance of its acceptance. Such a community realizes the debt they owe to their literary entertainers and instructors as one not to be estimated at its mere money's worth. Men and women like Carlyle, Tennyson, Darwin, Ruskin, Macaulay, Freeman, Stubbs, Green, the Brownings, George Eliot, Mrs. Oliphant, Bryce, Morris, etc., are benefactors to the world. They enormously increase the sum of human happiness, as well as of intellectual, and even in some cases of material, wealth. It is surely a very reasonable demand that we shall recognize their right to some honest payment for their labours, even though we should have to submit to a higher charge for our books. No doubt the publisher who reprints Tennyson, George Macdonald, Mrs. Ward, Mrs. Oliphant, or any other author—picking out the already popular work, so as to run no risk—can afford to undersell the author's publisher. But if this is a righteous proceeding it should have a wider application; for, tried by such a standard, the smuggler, or other fraudulent acquirer of materials for his craft, if he thereby furnishes a cheaper article, is a public benefactor. An author expends time, labour, money, and often the fruits of long years of preparatory training, in the production of his work. The manufacturer does the same. In addition to his time, labour, and money, he also has probably spent years in learning his trade. But the article he manufactures is a tangible product. If anybody lays hands on it even international extradition laws will deal with the thief. But the article manufactured by the historian, the poet, the novelist, or the man of science, can be filched by the process of reprint, and neither extradition law nor international code of morals takes any notice of the wrong.

Looking to Canadian copyright legislation from the point of view that this Society may be assumed to represent, there are some aspects of it that "The Trade" are least likely to appreciate. There are a considerable class of writers to whom pecuniary profit is a matter of very secondary consideration. As Carlyle aptly puts it: "He does not undertake to say whether his literary labour deserves any recompense in money; or whether money in any quantity could hire him to do the like." No mere money payment would have begot either the "Principia" or the "Paradise Lost," Locke's "Essay on the Human Understanding," Adam Smith's "Wealth of Nations," Darwin's "Descent of Man," or other epoch-making books. But authors of that class attach supreme importance to the form of publication; and frequently regard the accompanying illustrations as no less indispen-

sable than the letter press to the full expression of their ideas. The piratical publisher, in his aim at a cheap popular reissue, often inflicts a grievous injustice on this class. To no author is the external aspect of his work a matter of indifference. Long years ago Messrs. Macmillan issued "The Five Gateways of Knowledge," the work of my late brother, Dr. George Wilson—a prose poem of suggestive thought and graceful play of fancy—in a dainty little volume, with a beautiful frontispiece of kindred idealism from the pencil of Sir Noel Paton. I have an American reprint of it on poor paper, in bad type, and coarse boards. I cannot imagine any royalty accruing from the disfigured, dingy reprint that would have compensated for the wrong. Yet we constantly see the reissue of popular English authors in small type, double columned editions, and paper covers, fit only to be glanced over, dog-eared, and thrown aside. His Canadian critic is shocked at the stupidity of the British author who will not be tempted by a 10 per cent royalty on the product, to "help Canadian publishing industries" by becoming a party to such an issue of his works. Well, if they are his, he has a right to say whether or not they shall be published on such conditions.

Again an author—scientific investigator, philosophical speculator, political or theological controversialist—may have modified or wholly renounced his earlier views. Like the poet, Southey, who, at the outbreak of the French Revolution, in a fit of youthful enthusiasm, wrote his "Mat Tyler," an extravagant exposition of anarchical republicanism. Long after he had sobered down into the orthodox champion of high-church toryism, the forgotten MS. fell into the hands of an unscrupulous opponent, and was published to the world, in purposed contempt of the author's supposed wishes. The poet disarmed criticism by the manly retort that he was no more ashamed of having been a republican, than of having been a boy! Nevertheless, an author may justly complain of the legalized sanctioning of such a procedure, as a mere source of gain to some mercenary publisher. Like Wordsworth, Coleridge, and the rest of the pantisocratic enthusiasts of Bristol, he may have wholly abjured the opinions of his youth, or like Newman, have exchanged evangelical Protestantism for the Roman faith, and a Cardinal's hat. If he is sufficiently noteworthy the transformation will be chronicled in due time; but he surely has a right to withhold long repudiated opinions from publication under his name.

I venture then to offer the following propositions, though I can scarcely hope that they will meet with the unqualified approval of the "publishing industries":—

1. An author should have a right to say whether his book shall be printed or not.
2. An author should have some control over its form of issue, and a right, if he thinks fit, to object to shabby paper, doubled-columned small type, yellow paper cover, etc.
3. Still more, an author should have a right to prohibit absolutely the stereotyping and perpetuation of a first or other early edition, long after he has modified or materially altered his work in subsequent editions. This is a grievance keenly felt by the author, who finds himself quoted as maintaining views he has long repudiated. But while the printer can make use of his name to sell the obsolete version—which it will ever be the interest of the printer and publisher to do—he has no redress.

Here the reader's and the author's interests coincide, and are in direct antagonism to those of the publisher. The school books of Canada continued for years to ignore the great astronomical discovery of Neptune, and in other ways to lag behind the age, just

because it was profitable to the publisher to use his old stereotyped plates. In all progressive sciences; in anthropology, archæology, geology, and biology; in the science of language, in history and philosophy; in theological and historical criticism, no author would willingly see his book stereotyped. He welcomes the invitation which a new edition offers, as an opportunity for revision, and the modification or expansion of earlier conclusions.

To the publisher, on the contrary, every motive of interest and ready profit is in favour of stereotyping. He not only lays his plates aside, and prints additional copies from time to time, to meet the current demand, but he can take advantage of the fresh impetus given by the favourable reception of an author's new and revised edition, to reissue the old one, with all its shortcomings and blunders. Such cases have been by no means rare. The Harpers of New York, stereotyped the earlier editions of Sir Charles Lyell's works, and continued to supply them to the American reader until the fraud culminated in a professor of natural theology producing the long abandoned views of the author of "The Antiquity of Man," in confutation of opinions of which he was the avowed champion. Only those who have suffered can fully realize the intense disgust with which an author sees his early, crude opinions, his errors, and imperfections, perpetuated in a new edition over which he has no control, and which he would gladly have revised on almost any terms.

4. Further, an author should have a right to prevent the addition of any preface, supplement or appendix, unauthorized by him; and still more, to preclude all tampering with his text. This has been a frequent ground of complaint by English authors. The late Dr. Robert Chambers, for example, protested indignantly against encyclopædia articles reproduced with his name attached to them, while they had undergone material alterations to adapt them to American popular opinion. The more recent tamperings with the text of the *Encyclopædia Britannica*, a work brought out at great cost by its English publishers, and reproduced in the United States in open contempt of all moral obligations as to proprietary rights, either of authors or publishers, has been scandalous.

The conditions imposed by the Canadian "Copyright Act," which abrogate an author's right in his own property, within one month from its issue from the English press, are glaringly unjust. If they are reasonable, why not apply them to all property? The author, or his publisher having duly registered his work, where it had been produced and published, is known and accessible to all, as the rightful owner or disposer of the copyright. It is no unreasonable requirement that his rights shall remain in perpetuity, and any Canadian printer or publisher desiring to issue a reprint, or in any other way to co-operate in the publication and sale of his work, shall be required to negotiate with him or his agent in precisely the same way as is now required to transact business with the manufacturer of any other marketable goods.

"Even in England," one of the defenders of the Canadian Copyright Act remarks, "neither literary copyright nor patent right is held to be absolute and perpetual. Without protection by the common law literary industry would, of course, have no stimulus; but in no country is the work of an author, when given to the public, an indefeasible and inalienable property. So treated, there is a broad distinction for the general good as it is held, between literary property and property of other kinds. That the public, after a

reasonable time, become the reversioners of literary property is sufficient indication of the difference which the law has intentionally created."

As the English law secures the author not only a life-rent property, but certain rights as to its disposition thereafter, the contrast between those rights, and the proposed Canadian wrongs render any detailed discussion on the point unnecessary. Literary property, like property in land, requires special legislation just because it cannot be put in the pocket or locked up in the safe. So long as Homer and the old minstrels carried about their epics and ballads in their brains their property was safe in their own keeping. Shakespeare and his brother players of the "Globe" and "Blackfriars," did their best to protect their popular tragedies and comedies,—the "Hamlet," the "Lear," the "Romeo and Juliet," the "Tempest," and "Midsummer Night's Dream,"—from the piratical appropriators of such wares in the Elizabethan age, by keeping them out of the printers' hands. But once the beneficent printing press has multiplied copies of our "Hamlet" and "Midsummer Night's Dream," our "Alices in Wonderland," or our "Idyls of the King," they are not only available for the delight of thousands of readers, but also for the dishonest gain of a good many misappropriators beyond the reach of statute law.

An honest Canadian Copyright Act will place the author's rights foremost. The fact that he has disposed of the copyright for the British market is no reason why he may not negotiate with the Canadian printer and publisher for its issue here. Native Canadian authors are as yet few; but they are growing in number, and we may hope for a more intelligent and honest recognition of the author's interest being supreme in the right of property in the creations of his mind, and the products of his pen. It is a small return to ask of the civilized world for all the pleasure and the profit it owes to its historians, poets, biographers, scientific discoverers, novelists and other authors, that it shall protect them in the same right to an honest payment for the fruits of their labour, as it extends to the manufacturer of dry-goods or hardware, to the baker, the brewer, the farmer or the tailor.

It is creditable to Great Britain that she has never yielded to the temptation to retaliate on the American author, and deny him any right of property in his works. We shall do well and wisely if we follow the honourable example of the mother country, whose authors have a much stronger claim on us. If they are provoked to insist on retaliation against Canadian authors, Canadian literature is just reaching the stage when its effect might prove most adverse. It will be in the true interest of the Dominion if we are compelled to reconsider the basis on which a Canadian Copyright Act should be framed. In doing so such bodies as the Royal Society, the Canadian Institute and the Universities should be consulted, as well as the booksellers, printers and publishers. The result may be the adoption of a measure framed on broad principles of justice and honour—principles that pay better in the long run than those of a mere narrow selfishness.